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In This

Supreme Court of the United States

October Term, 1970

No. 324

FREYTON A. TATE,

Petitioner,

vs.

HERMAN SHORT, Chief of Police, Houston, Texas,

Respondent.

**On Writ of Certiorari to the Court of
Criminal Appeals of Texas**

**MOTION OF THE
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION
TO FILE A BRIEF AS AMICUS CURIAE AND
BRIEF AMICUS CURIAE**

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**NATIONAL LEGAL AID AND
DEFENDER ASSOCIATION**

August 18, 1970

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**MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE***

The National Legal Aid and Defender Association respectfully moves for leave to file a brief *amicus curiae* in this case in support of the petitioner.

The National Legal Aid and Defender Association, hereinafter called NLADA, is a non-profit corporation whose primary purpose is to assist in providing more and better legal services for the poor. Its members include the great majority of defender offices, coordinated

* Consent has been granted by Petitioner. The consent of the Attorney General of the State of Texas and the Corporation Counsel for the City of Houston, attorneys for the respondent, was requested but refused.

assigned counsel systems, and legal aid societies in the United States. The NLADA also has 1600 professional members, many of whom are practicing attorneys who represent indigent persons in criminal and civil matters.

The imprisonment of an indigent for failure to pay a fine is an issue of vital concern to members of NLADA, many of whom represent indigents who face possible imprisonment for failure to pay a fine. At the request of one of its member offices, the NLADA recently filed an *amicus curiae* brief in *Williams v. Illinois*, 398 U.S., 90 S. Ct. 2018 (1970) and stated fully therein its interest as *amicus curiae*. In its *amicus* brief in *Williams* the NLADA urged that it was unjust to permit indiscriminate imprisonment of indigent defendants simply because of their inability to pay fines and unconstitutional to incarcerate an indigent defendant for a period in excess of that authorized by statute because of his financial inability to pay a fine.

The case now before the Court presents an equally compelling issue which requires constitutional resolution. Here the petitioner was incarcerated for twenty-one days for failure to pay a \$425 fine. After having received credit of \$105 at the rate of five dollars per day, the petitioner still owes \$320 or has sixty-two days left to serve in jail for failure to pay, despite the fact that the sentencing court is a court of limited jurisdiction with the power to punish offenses only by fine and not by imprisonment. See Petitioner's Petition For Writ Of Certiorari, at p. 3. The Court of Criminal Appeals of Texas declined to order petitioner's release and rejected his argument that "because he is too poor to pay the fine his imprisonment is unconstitutional." *Tate v. Short*, 445 S.W. 2d 210 (Texas Ct. Crim. App. 1969).

The guiding philosophy of the NLADA and its members is that each citizen, regardless of his social and economic status, is entitled to equal justice under law. We urge, therefore, a reversal of the judgment of the Texas Court of Criminal Appeals because we believe that it is inherently unjust to incarcerate an indigent for involuntary non-payment of a fine and because we believe that the Constitution, pursuant to this Court's holding in *Williams*, specifically prohibits a court without power to punish offenses by imprisonment from incarcerating an indigent defendant because of his financial inability to pay a fine.

In view of the direct importance of this case to legal aid attorneys and public defenders serving the poor throughout the country, and to the poor themselves, the Executive Committee of the NLADA has authorized and instructed the NLADA staff to prepare and file an amicus brief in this case if so permitted by the Court.

Wherefore, it is respectfully prayed that this motion for leave to file the annexed brief *amicus curiae* be granted.

Respectfully submitted,

/s/ ALLAN ASHMAN

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NATIONAL LEGAL AID AND
DEFENDER ASSOCIATION

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**BRIEF OF THE
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION
AS AMICUS CURIAE**

INTEREST OF AMICUS CURIAE

We respectfully refer the Court to the preceding motion for leave to file this brief wherein the interest of the *amicus curiae* is set forth.

OPINION BELOW

The opinion of the County Criminal Court at La No. 1 of Harris County, Texas was unreported. It is set out in the appendix to Petitioner's Petition For Writ of Certiorari, at p. 2a. The opinion of the Court of Criminal Appeals of Texas is reported at 445 S.W. 2d 210 (1969) and is set out in the appendix to the Petitioner's Petition For Writ of Certiorari, at p. 1a.

JURISDICTION

The jurisdiction of this Court to review by writ of certiorari the judgment of the Court of Criminal Appeals of Texas is conferred by 28 U.S.C. 1257 (3). Certiorari was granted on June 29, 1970.

STATUTORY PROVISIONS INVOLVED

The relevant State and Municipal statutory and code provisions are: (1) Articles 4-14, 45.06, and 45.53, Vernon's Texas Ann. Code of Criminal Procedure; (2) Article 11, § 12, Houston, Texas Charter; and (3) Sections 15-60, 15-61, and 35-8, Code For the City of Houston. These statutes, charter, and code provisions are set out in full in Petitioner's Petition For Writ of Certiorari at pp. 4-6.

QUESTION PRESENTED

Whether it is a violation of the Equal Protection Clause of the Fourteenth Amendment for a court of limited jurisdiction with no power to sentence defendants to jail to imprison indigent defendants who are unable to pay their fines.

STATEMENT OF THE CASE

The NLADA adopts Petitioner's Statement.

SUMMARY OF ARGUMENT

The Corporation Court of the City of Houston which convicted the petitioner and sentenced him to work off his fine clearly was without jurisdiction to sentence the petitioner to jail for a substantive offense. This Court's holding in *Williams v. Illinois*, 398 U.S., 90 S. Ct. 2018 (1970), that the "Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status," is controlling in the present case. It follows, therefore, from the *Williams* holding that the statutory ceiling for a substantive offense be the same for all persons regardless of their ability to pay. Thus, if the statutory ceiling for a substantive offense is a fine, a sentencing court cannot automatically convert a fine into a jail term solely because a defedant is indigent and cannot forthwith pay a fine.

The Texas Legislature has made a fundamental decision that for offenders convicted in the Corporation Court a fine and not imprisonment is the appropriate penal sanction. However, when the Corporation Court sentences an indigent defendant to jail for failure to pay a fine it subverts the legislative decision to deal with offenders "by fine only."

ARGUMENT

I.

IT IS A VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT FOR A COURT OF LIMITED JURISDICTION WITH NO POWER TO SENTENCE DEFENDANTS TO JAIL TO IMPRISON INDIGENT DEFENDANTS WHO ARE UNABLE TO PAY THEIR FINES.

The NLADA stated in its *amicus curiae* brief filed in *Williams v. Illinois*, 398 U.S., 90 S. Ct. 2018 (1970), that just as poverty should not be a reason for denying a man access to trial and appellate courts, see *Griffin v. Illinois*, 351 U.S. 12 (1956) and *Douglas v. California*, 372 U.S. 353 (1963), so poverty should not be a reason for incarcerating an individual. Yet, a rich man who can pay his fine avoids imprisonment while a poor man who cannot pay his fine usually is imprisoned. In this situation the poor man often suffers punishment for his poverty rather than for conviction of a substantive offense.

The case presently before this Court presents another striking example of a denial of equal protection of laws wherein a state apportions justice according to the dollar. It is, as this Court noted in *Williams*, a new case exposing "old infirmities which apathy or absence of challenge have permitted to stand." 90 S. Ct. at 2024. As in *Williams* the broad question, and one indirectly at issue in the present case, is whether any statutory scheme resulting in an indigent's incarceration because of his inability to pay a fine is permissible under the Constitution. Not at issue is the question of whether fines, as such, are a

valid criminal sanction or whether a court has the authority to order "fine or imprisonment" sentences. The narrow question for determination is whether an indigent can be imprisoned for involuntary non-payment of a fine by a court that does not have jurisdiction to order "fine or imprisonment" sentences, but may only order a fine.⁽¹⁾

In *Williams* the indigent appellant was sentenced to 101 *additional* days in jail beyond his maximum term of imprisonment, because of his inability to pay a fine and court costs. In the instant case, the indigent petitioner has been incarcerated for involuntary non-payment of a fine by a court of limited jurisdiction with power to punish substantive offenses by fine only and not by imprisonment. Houston, Texas Charter, Art. 11, Sec. 12. The Houston Charter and City Code, and their application in the case at bar, raise a serious question of a fundamental deprivation of rights under the Equal Protection Clause of the Fourteenth Amendment.

The Corporation Court of the City of Houston which convicted the petitioner and sentenced him to work off his fine clearly was without jurisdiction to sentence the petitioner to jail for a substantive offense. The statute creating the court grants jurisdiction to the Corporation Court "in all criminal cases arising under the criminal law of this State (Texas), in which punishment is by fine only. . . ." See Art. 4-14, Vernon's Texas Ann. Code of Criminal Procedure. The Court of Criminal Appeals of Texas has already spoken on the issue of whether

⁽¹⁾ On this point see also *Morris v. Schoonfield*, 398 U.S. . . ., 90 S. Ct. 2232 (1970), where this Court vacated judgment and remanded in light of intervening legislation and its holding in *Williams*.

the jurisdiction of a court of limited jurisdiction, like Houston's Corporation Court, can be extended. In *Ex parte Morris*, 325 S.W. 2d 386 (Texas Ct. Crim. App. 1959), a case involving a charge of trespass brought originally before a Justice Court, the defendant was fined and his hunting license revoked. The Court of Criminal Appeals held that the Justice Court was without jurisdiction to do anything but fine a party. It reaffirmed the proposition that justices of the peace were without authority to try a prosecution under a criminal statute authorizing a punishment by imprisonment.

The sentencing practice now on review works a greater hardship and permits a more invidious discrimination upon the poor than the Illinois practice which was found unconstitutional in *Williams*. In *Williams* the appellant was forced to serve a *longer* term of incarceration than the law allowed for his offense, simply because he was poor. Here, the petitioner actually is serving a far more onerous sentence than the law contemplates or permits for his offense—a jail term as opposed to paying a fine—because he is poor. In both instances imprisonment as a form of punishment responds to no valid objective of the criminal law. Rather, imprisonment responds only to the particular defendant's financial situation. In *Williams* this Court underscored the proposition that a judge who sentences an indigent defendant to 30 days or 30 dollars may justifiably find that in order to punish the defendant for the substantive offense or deter others who might be inclined to commit similar crimes, the immediate imposition of some sort of penalty greater than a future obligation to pay is required. A judge's discretion to sentence certainly contemplates such judgments.

However, simple and unequivocal punishment for poverty serves no natural purpose.

We submit, therefore, that this Court's holding and rationale in *Williams*—that the “Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status”—is controlling in the present case. 90 S. Ct. at 2023-2024. It must follow from this holding that the statutory ceiling for a substantive offense be the same for all persons regardless of their ability to pay. Thus, if the statutory ceiling for a substantive offense is a fine, a sentencing court cannot automatically convert a fine into a jail term solely because a defendant is indigent and cannot forthwith pay the fine. See *Morris v. Schoonfield*, *supra* at 90 S. Ct. 2233 (White, J., concurring).

This Court stated in *Williams* that “a statute permitting a sentence of both imprisonment and fine cannot be parlayed into a longer term of imprisonment than is fixed by the statute since to do so would be to accomplish indirectly as to an indigent that which cannot be done directly.” 90 S. Ct. at 2023. We do not suggest that a court is rendered powerless to enforce its fines. On the contrary, this Court emphasized that its decision in *Williams* does not “preclude imprisonment for willful refusal to pay a fine or court costs.” 90 S. Ct. at 2023, footnote 19.

Also, alternative means, short of imprisonment, do exist for the State to enforce judgments against persons too poor to pay a fine. See 90 S. Ct. at 2024, footnote 21, and accompanying text discussing the collection of

fines through installment plans. In short, if the purpose of incarcerating an indigent is to enforce payment of fines, such a purpose is not furthered in the case of an indigent who cannot pay the fine. All that incarceration accomplishes is to give defendants with money an undue advantage in that they can avoid a jail sentence by paying their fines, while the indigent defendant is incarcerated regardless of his desire or inability to pay. See e.g., *People v. Collins*, 47 Misc. 2d 210, 261 N.Y.S. 2d 970 (Orange County Ct. 1965), *People v. Saffore*, 18 N.Y. 2d 101, 218 N.E. 2d 686 (1966), and *Sawyer v. The District of Columbia*, 238 A. 2d 314 (D.C. Ct. App. 1968).

Imprisonment for non-payment of a fine should be relied upon only as a method of correction and punishment for individuals who willfully refuse to pay a fine. A person must be capable of paying a fine before he can be imprisoned for his "refusal" to pay it. Under the present sentencing practice of the Corporation Court of the City of Houston (see Appendix A) one of two persons convicted of identical offenses, under essentially similar circumstances and upon comparable records, and sentenced to pay the same fines can walk out of court or be transported to jail depending entirely upon his financial position, despite the fact that the substantive offense for which both were convicted carries no jail term. We ask only that this Court insure uniform sentencing practices and that imprisonment for failure to pay a fine be limited so as not to include those persons who fail to pay because they are financially unable to pay.

II.

THE ROUTINE PRACTICE OF THE HOUSTON CORPORATION COURT OF INCARCERATING INDIGENTS FOR INVOLUNTARY NON-PAYMENT OF FINES SUBVERTS THE EXPLICIT INTENT OF THE TEXAS LEGISLATURE TO MAKE FINES THE ONLY PENAL SANCTION AVAILABLE TO SUCH A COURT.

In granting jurisdiction to the Houston Corporation Court "in all criminal cases arising under the criminal laws of (Texas), in which *punishment is by fine only . . .*" (emphasis added), the Texas Legislature, in effect, has made a fundamental decision that for offenders convicted in the Corporation Court a fine and not imprisonment is the appropriate penal sanction. See Art. 4-14, Vernon's Texas Ann. Code of Criminal Procedure. This reflects a determination that the safety and welfare of the community does not require offenders to be incarcerated in cases involving the substantive offenses over which the Corporation Court has jurisdiction. However, if, as here, a defendant is not able to pay a fine and the court nevertheless fines him and orders his immediate imprisonment, it has in fact sentenced the defendant to imprisonment thereby subverting the legislative decision to deal with offenders "by fine only." See Rubin, *The Law of Criminal Correction* (1963), at 254.

The routine practice of the Corporation Court of incarcerating indigent defendants for involuntary non-payment of fines (see Appendix A) makes even less sense when viewed against another function of the fine. Clearly, fines are a form of penal sanction, but, at least in Houston, fines also are an important and substantial source of municipal revenue. For example, in 1968 almost \$4,500,000 in fines were collected by the Corporation Court for a

wide variety of traffic offenses. See Appendix B. Of this amount, slightly less than two million dollars in fines were assessed for various speeding violations while almost one hundred thousand dollars in fines were assessed for loud and defective mufflers. See Appendix C. By comparison the entire 1968 budget for the City of Houston's Corporation Courts Administrative Department was under seven hundred thousand dollars. See Appendix D.

In Houston, then, fines levied against traffic offenders are intended to accomplish more than punishment *per se*. By establishing fines as the appropriate method for dealing with offenders appearing before local corporation courts, the Texas Legislature has not only denominated the fine as the appropriate penal sanction but has assured cities of an important source of revenue. Nevertheless, from a penological and monetary standpoint no lawful or rational end is served by incarcerating an indigent defendant who is unable to pay a fine.

CONCLUSION

For the reasons stated we respectfully submit that the judgment of the Court of Criminal Appeals of Texas in this case should be reversed.

Respectfully submitted,

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August 18, 1970

APPENDIX A*

FINES BUREAU DIVISION OF THE CORPORATION COURT

The function of this division is to accept voluntary payments from citizens for moving traffic violation citations, record transactions on the cash register, process moving traffic violation citations for court, answer inquiries from citizens pertaining to the violations and make certified copies of dispositions of complaints when requested by letter.

Persons, except juveniles and "No Operator's License" defendants, who wish to pay the fines for their violations without appearing in court may do so at the Fines Bureau. These payments are recorded on the cash register by docket number and violation and rung as a complaint. *If a person appears in court and is found guilty and does not have money to pay his fine, he is committed to jail to serve the amount of the fine at the rate of \$5.00 per day. (Emphasis added.)* In certain cases a person may be allowed \$7.50 credit per day. The complaint in this case is rung as a sentence. If the citizen pays his fine while in jail, the transaction is recorded as TDR (today's delinquent receipts).

* All information contained in Appendices A-D is taken from an official copy of the 1968 Annual Report of the City Courts Department and Corporation Courts Administrative Department for the City of Houston.

APPENDIX B

SOURCES OF MONEY RECEIVED BY THE CITY COURTS DEPARTMENT

Source of Money Received	1967	1968
Traffic Violations	\$4, 185, 126.06	\$4, 303, 339.49
Parking Violations	286, 335.42	371, 491.31
Report Violations	1, 210.00	5, 326.00
Liquor Sales	47, 916.00	70, 810.00
Court Costs	1, 170.60	2, 716.10
Totals	\$4, 521, 758.08	\$4, 753, 682.90

SUMMARY OF SELECTED TRAFFIC OFFENSES
AND DISPOSITIONS FOR THE YEAR 1968

Selected Offenses	Cases Filed	Cases Disposed	Voluntary Payment	Bond Forfeiture	Plea of Guilty	Found Guilty
Ran red light	22,067	20,686	40	827	17,522	634
Ran boulevard stop sign	8,593	8,193	14	369	6,866	246
Exceeding speed limit	114,828	107,549	200	2,873	93,874	2,372
Improper turn from wrong lane	4,631	4,506	6	118	3,959	88
Defective muffler	4,086	3,662	3	424	2,552	82
Improper changing of traffic lanes	1,718	1,569	3	94	1,053	186
No vehicle registration tags	5,931	5,017	7	523	3,102	70
No operating drivers license	58,867	47,986	15	6,054	25,159	814
Excessive noise by spinning tires	3,162	2,805	2	251	2,153	93
Prohibited device-loud muffler	4,264	3,876	2	404	2,789	99
Other	*	*	*	*	*	*
Totals For <u>All</u> Traffic Offenses	307,466	279,965	407	15,713	215,241	8,876

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APPENDIX C

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Bond Forfeiture	Plea of Guilty	Found Guilty	Not Guilty	Nolle Prosequi	Quashed	Dismissed	Fines Assessed
827	17,522	634	284	14	1,358	7	\$ 299,718.04
369	6,866	246	118	6	574	--	115,332.76
2,873	93,874	2,372	929	54	7,220	27	1,821,208.77
118	3,959	88	55	1	279	--	45,912.35
424	2,552	82	34	2	564	1	47,886.00
94	1,053	186	24	--	204	5	33,630.00
523	3,102	70	58	9	1,241	7	45,730.00
6,054	25,159	814	158	92	15,694	10	865,489.03
251	2,153	93	61	5	239	1	41,402.35
404	2,789	99	55	5	512	1	51,432.35
*	*	*	*	*	*	*	*
15,713	215,241	8,876	2,657	313	36,647	111	\$4,537,509.44

CORPORATION COURTS ADMINISTRATIVE DEPARTMENT
BUDGET AND EXPENDITURES 1968

APPENDIX D

Type Expenditures	Budget		Expended		Under /Over	
A. Personal Services						
4. Salaries	<u>\$608,969.00</u>		<u>\$517,072.33</u>		<u>\$91,896.67</u>	
		\$608,969.00		\$517,072.33		\$ 91,896.67
B. <u>Supplies</u>						
1. Office	<u>20,000.00</u>		<u>15,900.45</u>		<u>4,099.55</u>	
		20,000.00		15,900.45		4,099.55
C. <u>Contractual</u>						
1. Transportation	1,200.00		1,107.84		92.16	
3. Communication	8,500.00		7,450.49		1,049.51	
6. Rental	4,100.00		2,910.70		1,189.30	
44. Miscellaneous	<u>13,500.00</u>		<u>10,184.96</u>		<u>3,315.04</u>	
		27,300.00		21,653.99		5,646.01
D. <u>Maintenance</u>						
2. Furniture & Fixtures	2,000.00		531.96		1,468.04	
7. Automotive	<u>9,000.00</u>		<u>9,263.45</u>		<u>(263.45)</u>	
		11,000.00		9,795.41		1,204.59
E. <u>Capital Outlay</u>						
	<u>7,500.00</u>		<u>8,529.23</u>		<u>(1,029.23)</u>	
		7,500.00		8,529.23		(1,029.23)
TOTALS		\$674,769.00		\$572,951.41		\$101,817.59